



Battle Creek Zoning Board of Appeals

Staff Report

Meeting: January 10, 2012
Appeal #Z-01-12

To: Zoning Board of Appeals
From: Glenn Perian, Senior Planner
Date: January 3, 2012
Subject: Petition for a dimensional variance (Z-01-12) to permit the construction of 9' fence in a front yard and side yard on a lakefront property located at 95 Sunnyside Drive.

Summary

This report addresses a petition from Dorothy Estes, seeking approval of a Dimensional Variance (Z-01-12), to construct a "5' or 6' fence" on top of a retaining wall at 95 Sunnyside Drive.

Background/Project Information

The subject site is located at 95 Sunnyside Drive. The subject lot is an interior lot located on Goguac Lake and is zoned R-1B "Single Family Residential" District. The subject lot is approximately 86' wide x 166' deep and meets the minimum width and lot area standard for the R-1B zone, however, this particular lot slopes severely, approximately 16", in the rear yard just beyond the home down to Goguac Lake and the lot sits approximately 4' above the adjacent lot at 93 Sunnyside. The residential home and detached garage are located on a flat portion of the lot with the detached garage sitting quite close to the road. The request is to construct a fence on top of the already built retaining wall taller than what the Ordinance allows. Chapter 1298.05 of the Zoning Ordinance states that fences between 25' of the right of way and the first supporting member of the main structure shall not exceed 5' and fences in the side yard shall not exceed 6' in height. However, Chapter 1298.03 defines the height of the fence as the vertical distance as measured from the ground level at the lowest grade level **within 3 feet of either side of such fence** to the upper most portion of the fence.

Legal Description

WAUKEZOO PLAT LOT 5 ALSO NWLY 1/2 OF BEACH ST

Public Hearing and Notice Requirements

An advertisement of this public hearing was published in the Battle Creek SHOPPER NEWS on Thursday, December 22, 2011, not less than the 15 days before the hearing as required by State Law and ordinance.

Notices of the public hearing were also sent by regular mail on December 20, 2011, to 24 property owners and occupants located within 300 feet of the subject parcel. We have

spoken to the neighbor at 93 Sunnyside and he has no objections to the request and plans on attending the meeting.



Aerial Photograph of the Subject Site

Surrounding Land Uses

The subject property is located in a residential neighborhood on Goguac Lake.



Applicable Zoning Ordinance Provisions

Chapter 1234.04(a) C. Permit the reconstruction of a nonconforming building which has been damaged by explosion, fire, act of God or the public enemy, to the extent of more than fifty percent of its insurable value, where the Board finds some compelling necessity requiring a continuance of the nonconforming use, and the primary purpose of continuing the nonconforming use is not to continue a monopoly; and

(b) The Board shall have the authority to grant the following variations:

- (1) **Nonuse.** If there are practical difficulties for nonuse variances relating to the construction, structural changes, or alterations of buildings or structures related to dimensional requirements of the zoning ordinance or to any other nonuse-related standard in the ordinance in the way of carrying out the strict letter of the zoning ordinance, then the Board may grant a variance so that the spirit of the zoning ordinance is observed, public safety secured, and substantial justice is done. The Board may impose conditions as otherwise allowed under the Michigan Zoning Enabling Act, MCL 125.3101 et seq.; and [MCL 125.3604(7) and (8).]

Analysis

The Appellant is requesting a variance to construct a 10' tall fence at 95 Sunnyside Drive (a 6' fence on top of the 4' retaining wall). The Appellant has stated in the supporting material that the slope of the lot and the elevation to the neighboring property makes constructing a fence on top of the retaining wall nearly impossible. The Appellant has supplied additional reasons supporting the request for appeal and they are included with the application and part of this report. An aerial photo showing the shape of the lot, building locations, and existing contours of the lot has also been provided. The Appellant would like to place the fence on top of the retaining wall as shown in the pictures provided.

Is there something unique about this lot or property that makes relief necessary? We would agree that the subject lot sits higher than the property to the northwest and a retaining wall has been built at the property line. We would also agree that the lot slopes approximately 16' in the rear yard (lake side) making it difficult to near impossible to locate a fence in compliance with the zoning Code. For safety reasons, the Appellant has very limited options other than requesting a variance to construct a fence on the northwest property line, on top of the retaining wall. Furthermore, Chapter 1298 of the Planning and Zoning code states that fences shall be permitted on residential lots.

Findings and Recommendation

The Zoning Board of Appeals can approve, approve with conditions, or deny this request. The Zoning Board of Appeals can also table or postpone the request pending additional information. In consideration of all variations from the Zoning Code, the Board shall, before making any such exceptions or variations, in a specific case, first determine that the conditions listed below are satisfied. Planning staff has reviewed these conditions and we believe that each condition can be justified in an affirmative manner. We have provided a rationale for each condition set forth below for Dimensional Variances. Therefore, the Planning staff recommends that the Zoning Board of Appeals approve the Dimensional

Variance (Z-01-12), with modifications, based on the following findings contained in this staff report.

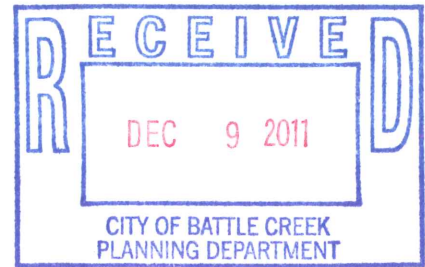
- A) Staff finds that practical difficulty does in fact exist if the strict requirement of the Ordinance is applied to this specific building project and that the Board is authorized to grant a variance in this case. We believe that the elevation of the subject property in relation to the neighboring property presents substantially more than a mere inconvenience in this case. For safety reasons, we believe that a fence should be place on top of the retaining wall to keep anyone from falling.
- B) Staff believes that the practical difficulty associated with the severe slope of the property is exceptional and peculiar to the subject parcel and does not generally exist throughout the City. The elevation of the land is not self created and because the ordinance allows for fences on residentially zoned property, we do not believe the lot could accommodate a fence in a manner that the Ordinance allows.
- C) Staff does not believe that if the variance is granted that the intent of the Ordinance will be altered or that the rights of others will be compromised.
- D) Staff believes that the variance requested exceeds the minimum necessary to provide relief from the practical difficulty of the elevation changes of the subject lot and neighboring property. Therefore, we are recommending that a 4' tall fence be approved to be placed on top of the retaining wall (8' total height) to provide safety from the elevation change at the retaining wall.

Attachments

The following information is attached and made part of this Staff Report.

1. ZBA Petition Form (Petition #Z-01-12)
2. Supplemental information relating to the request
3. Fence and retaining wall cost proposals
4. Photos

Dorothy L. Estes
95 Sunnyside Dr.
Battle Creek, MI 49015



November 19, 2011

City of Battle Creek Department of Planning and Zoning
Zoning Board of Appeals
77 East Michigan Avenue, Suite 204
Battle Creek, MI 49017

Dear Members of the Zoning Board of Appeals,

First of all, thank you for your time and consideration.

Here is the short...

What I am requesting is a variance to erect a fence on the top side of a retaining wall on the west side of the property located at 95 Sunnyside Drive. The wall and fence were destroyed in the storm that hit Battle Creek Memorial Day weekend 2011.

Further supporting information:

The property located at 95 Sunnyside Drive is owned by my mother-in-law, Dorothy L. Estes. I told her I would help her with this application and hearing and am therefore representing her.

Dorothy Estes contracted with DJ Landscaping to remove the old fences that were left, the scrub bushes and trees and to replace the destroyed retaining wall. DJ Landscaping removed the old retaining wall, fences, landscaping and bushes. DJ Landscaping then replaced the destroyed retaining wall between the properties located at 95 & 93 Sunnyside Drive in November of 2011. DJ Landscaping has some more restoration to do in the Spring of 2012 to finish the project. DJ Landscaping also placed tubes in the ground for Justice Fence to erect a new fence. (I have attached a copy of proposal from DJ Landscaping.)

After meeting with a City of Battle Creek inspector, Justice Fence Company explained to me that there are several City of Battle Creek fence ordinances that we would be in violation of if we had Justice Fence Company erect a six (6) foot fence between the properties. One is the height of the fence. I believe I understand five (5) feet is the maximum height of a fence in that area. The other is that the fence height is determined by finding the lowest elevation within three (3) feet of the line where the fence is to be erected. It is from this point the height of the fence is determined. There is one point where the retaining wall drops approximately 4 feet. That means the height of the fence on top of the retaining wall (or on the 95 Sunnyside side of the retaining wall) could only be one (1) foot high. Prior to starting this project Dave from DJ Landscaping met with Dorothy Estes and her neighbors at 93 Sunnyside Drive (Jim & Val Burton) to make sure all agreed and there were no misunderstandings.

On behalf of Dorothy Estes, my mother-in-law, we are asking for a variance to have Justice Fence Company erect a six (6) or five (5) foot fence on the top side of the retaining wall between the properties located at 95 and 93 Sunnyside Drive. I am including pictures of the before and after to give you a better idea of the situation.

Please feel to contact me to answer any questions you may have; or set a time to meet with you prior to the hearing.

Home – 968-4798 Office 962-5527

Sincerely,

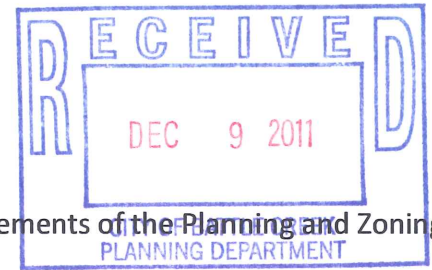
Dorothy L. Estes

John F. Dowdle

Date _____

Appeal No. Z-01-12

APPLICATION FOR A VARIANCE
ZONING BOARD OF APPEALS
City of Battle Creek, Michigan



An appeal to the Zoning Board of Appeals to authorize a variance from the requirements of the Planning and Zoning Code (Part Twelve) of the City of Battle Creek.

Name of Appellant: Dorothy L. Estes, represented by her son-in-law, John F. Dowdle
Address: 95 Sunnyside Drive Residence phone: (269) – 968- 1408
Phone numbers to reach John Dowdle Home: 968-4798 Office: 962-5527

TO THE ZONING BOARD OF APPEALS: Request is hereby made for permission to: **Erect**
Erect a fence on the top side of a newly constructed (replacement) retaining wall on the west side of the property located at 95 Sunnyside Drive and between the properties located at 95 & 93 Sunnyside Drive.

The proposed building or use requires Board action in the following areas:

Action to approve a variance regarding:

- 1.) The height of the fence (six (6) feet was the original plan)
- 2.) and placement of the fence on the top side for the retaining wall.

Property /Tax Description: Waukeezoo Plat Lot 5 Also NWLY ½ of Beach St Parcel # 8906-19-005-0

Size of Lot: Frontage: 86 Depth: 165.88

Size of Proposed Fence: Length: _____ X Height: Six (6) Feet

The following reasons are presented in support of this appeal (complete each section):

- a.) The retaining wall and fence project is intended to restore and improve the retaining wall and fence destroyed in the storm Memorial Day weekend 2011.
- b.) The adjoining neighbor (Jim and Val Burton) are in support of this project. The fence will also offer them privacy.
- c.) This problem is due to a unique situation not shared in common with nearby property owners because: of the retaining wall and difference in property heights
- d.) Granting the variance would not alter the essential character of the area because: This is restoring and improving what was in place prior to the Memorial Day weekend storm in 2010.

e.) Use Variance Only: _____

I hereby affirm that, to the best of my knowledge, all the above and accompanying statements, proposals, and pictures are correct and true. In addition, I give permission to the City of Battle Creek's Planning Department staff to access the property, if necessary, to take photographs of the subject of this appeal.

Name of Appellant: Dorothy L. Estes, represented by her son-in-law, John F. Dowdle

Dorothy Estes John F. Dowdle
Signature of Appellant, Dorothy L. Estes and representative, John F. Dowdle

Address of Appellant: 95 Sunnyside Drive, Battle Creek, MI 49015

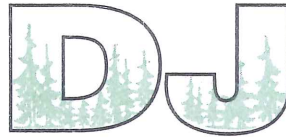
Proposal

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of

Pages

14901 Bowers Road
Bellevue, Michigan 49021



Phone (269) 962-2758
Fax (269) 962-2572

LAWN & LANDSCAPING, LLC

Mrs. Dorothy Estes
95 Sunny Side
Battle Creek MI 49015

968-1408 08-06-11
Retaining wall
95 Sunnyside

The following bid is for the Building of a retaining wall at the above location we will be doing the following work to the property .

We will remove all of the Blocks and scrub tree's along with landscaping from the area being re-built with Classic Wall Block , The wall will be about 4 foot tall in the tallest area and slope down on both end's as needed . The entire back side of the wall will be filled with stone and fill dirt , and leveled off when completed ,

Material needed for the project

967 Piece of Classic Wall Block
100 4 inch drain pipe
175 yards of stone for back fill
75 yards of fill dirt
12 days labor
195 cap Block's along the top

Hauling away of 20 yards of fill
Repairs to Lawn from building
20 Glue Tubes
1 Rolls Geo Tex.

Cost of Project \$19,350.00

*CONTRACTOR SHALL NOT BE LIABLE FOR THE FAILURE TO WHOLLY PERFORM HIS DUTIES IF SUCH FAILURE IS CAUSED BY A CATASTROPHE, VANDALISM, ACCIDENT, OR ACT OF GOD.

We Propose hereby to furnish material and labor — complete in accordance with above specifications, for the sum of:

_____ dollars (\$ _____).

Payment to be made as follows:

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance. Our workers are fully covered by Workmen's Compensation Insurance.

Authorized
Signature _____

Note: This proposal may be
withdrawn by us if not accepted within _____ days.

Acceptance of Proposal — The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Date of Acceptance: Sept. 12, 2011

Signature _____

Signature _____















